



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 1934-97

29 June 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board concluded that the 10% rating you accepted for obstructive sleep apnea was correct. It noted that the current rating criteria for obstructive sleep apnea, under which you received a rating of 50% from the Department of Veterans Affairs (VA) based on your use of an assisted breathing device, were not in effect prior to your discharge, and that even if they had been in effect, you would not have been entitled to a rating of 30% or higher under the Department of Defense modification of those criteria. The Board noted that you suffered from a number of additional conditions which were rated by the VA, but not the Department of the Navy. The reason for that apparent discrepancy is that the VA rates all conditions it classifies as "service connected", whereas the military departments rate only those conditions which render a service member unfit to perform the duties of his office, grade, rate or rating. The Board was not persuaded that your hepatitis or any of the other unrated conditions rendered you unfit for duty. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new

and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director